

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 358 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

MANSUKHLAL GOVIND VYAS

Appearance:

Mr.B B Naik for MR MANISH R BHATT for Petitioner
NOTICE UNSERVED for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 01/05/98

ORAL JUDGEMENT

(Per R.K.Abichandani, J)

The Income-tax Appellate Tribunal has referred the following question for the opinion of this Court under section 256(1) of the Income-tax Act, 1961.

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the charging of interest at lower rate than the market rate by an employer is not a perquisite in terms of section 17(2)(iii)(c) of the Income-tax Act ?"

2. The matter relates to the assessment year 1978-79. The assessee was an employee of the Bank of India who was granted a loan for housing purpose at the interest rest of 4%. The I.T.O. held that the loan granted to the assessee by the employer was at a concessional rate of interest and therefore, it amounted to perquisite under section 17(2)(iii)(c) of the Act and he therefore, made an addition of Rs. 4438/- in the total income of the assessee.

3. The Assistant Appellate Commissioner on appeal by the assessee held that the rate of interest of 12% should have been charged on the loan advanced to the assessee. Since higher rate was adopted by the ITO, a direction was given to the ITO to recompute interest accordingly. The Tribunal on appeal by the assessee following its own decision in a similar case, held that concessional element of interest could not be described as perquisite and allowed the assessee's appeal.

4. Under section 15 of the Act, the income mentioned thereunder was to be chargeable to income-tax under the head "salaries". The word "salary" is defined in section 17(1) of the Act and according to the Revenue, the concessional element of the benefit that accrued by way of charging lower rate of interest to the employee amounted to benefit which was given at a concessional rate.

5. It is clear that the grant of loan by itself is not a benefit or amenity granted to the employee. The employee is not obliged to take loan for housing purpose. Though charging a lower rate of interest may entail some loss of interest to the employer, that by itself would not fall in the definition of perquisite. This is borne out from the fact that the legislature tried to introduce clause (vi) in section 17(2) of the Act to include within the range of perquisite the amount of concessional rate of interest by the Taxation Laws (Amendment Act), 1984 with effect from April, 1985. Clause (vi) which was directed to be inserted in section 17(2) of the Income-tax Act by the Taxation Laws Amendment Act, 1984, was, as a measure of relief to salaried taxpayers, omitted with effect from

the date of its proposed insertion, namely, 1st April, 1985 and as a consequence thereof, sub-clause (vi) (b) in explanation II of section 40A (5) of the said Act which defined the term "perquisite" for the purpose of the said section so as to include perquisite value represented by interest free loan or loans at concessional rates of interest was also deleted. This is borne out from paras 18 and 20 of the memo explaining the provisions of the Finance Bill of 1985. ((See 152 ITR Statutes,161-162)).

Dealing with a similar question, the Calcutta High Court in C.IT vs. PRS Oberoi, reported in 183 ITR 103 came to the conclusion that interest free loan obtained by the assessee from the company was not a benefit or perquisite within the meaning of section 2(24)(iv) of the Act. The High Court took note of the fact that clause (vi) which was sought to be inserted in section 17(2) was omitted with effect from the date of its insertion and it was held that if loan granted to an employee without charging any interest or at concessional rate of interest did not constitute any benefit for the purpose of explanation 2(b)(iii) to section 40A(5) or section 17(2)(iii) of the Act, by the same yardstick, the said loan also cannot be construed benefit or prequisite for the purposes of section 2(24)(iv) of the Act. We are in respectful agreement with the said decision of the Calcutta High Court and hold that the Tribunal was right in coming to the conclusion that charging of interest at rate lower than the market rate by an employer did not amount to a perquisite within the meaning of section 17(2)(iii)(c) of the Act. The question referred to us is therefore, answered in the affirmative against revenue and in favour of the assessee. The Reference stands disposed of accordingly with no order as to costs.

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